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Supreme Court, U.S.
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No. 93-848

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

STANDARD FIRE INSURANCE COMPANY,
Petitioner,
vs.
FRANK BURNABY,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

MICHAEL M. BERGER
Counsel of Record

of BERGER & NORTON

1620 26th Street, Suite 200 South
Santa Monica, California 90404
(310) 449-1000

Attorneys for Respondent
FRANK BURNABY

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The Petition for Certiorari is based on fiction.

Seeking to build on the due process requirement of notice emphasized by this Court in *TXO Production Corp. v. Alliance Resources Corp.*, __U.S. __, 113 S.Ct. 2711 (1993), the Petition presents as its "Question" the constitutionality of a punitive damage award based on a finding of fraud where fraud has not "even been alleged." (Pet. i)

The premise of the Petition is demonstrably false. The following allegation appears *three times*, in *three different causes of action*, in the Second Amended Complaint (which was filed as Appendix E to the Petition for Certiorari):

> "Standard has acted with conscious disregard of Mr. Burnaby's rights, intending to vex, injure, or annoy him. Those actions are oppressive, *fraudulent*, or malicious. Standard's conscious disregard of Mr. Burnaby's rights entitles him to punitive damages." (App. E-11, ¶ 38 [cause of action for breach of the duty of good faith and fair dealing]; App. E-13, ¶ 45 [cause of action for breach of fiduciary duty]; and App. E-15, ¶ 51 [cause of action for breach of statutory duty].)

Petitioner is plainly unhappy with the judgment rendered against it and the agreement of the jury and 3 levels of state courts that the judgment was appropriate based on the Petitioner's conduct. That, however, is no basis for invoking this Court's jurisdiction.

No constitutional issue is embedded in this record. The modest award was fully justified by the record and — contrary to the false premise invented of whole cloth for the purpose of attracting this Court's attention — the Petitioner's fraudulent conduct was repeatedly alleged in the complaint.

Respondent Frank Burnaby prays that the Petition be denied.

Respectfully submitted,

MICHAEL M. BERGER
Counsel of Record

BERGER & NORTON

Attorneys for Respondent
FRANK BURNABY